

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT R. BENNIE, JR., individually,)
and on behalf of BOB BENNIE)
WEALTH MANAGEMENT, INC.)

Plaintiff,)

vs.)

CASE NO. 4:11-CV-03089-FG3

MOTION TO DISMISS

JOHN MUNN, in his official and)
individual capacity, JACK E.)
HERSTEIN, in his official and)
individual capacity, RODNEY R.)
GRIESS, in his official and individual)
capacity, and JACKIE L. WALTER, in)
her official and individual capacity,)
Defendants.)

COME NOW the Defendants, John Munn, Jack E. Herstein, Rodney R. Griess and Jackie L. Walter, in their official and individual capacities, and pursuant to Fed. R. Civ. P. 12(b)(6) moves to dismiss the Plaintiff's Complaint for the reasons it fails to state a claim upon which relief may be granted. In support of their Motion, Defendants show as follows:

1. Plaintiffs' allegations that "Defendants" collectively deprived Plaintiffs of their constitutional rights fail to state a claim because Plaintiffs have failed to identify the individual acts taken by each individual Defendant, in their individual capacity. Consequently, all of Plaintiffs' claims should be dismissed.

2. Plaintiffs' first and third claims should be dismissed for failing to state a claim because they failed to allege facts establishing that Defendants denied them a

constitutionally protected property or liberty interest and because Plaintiffs failed to exhaust their state remedies by requesting a hearing.

3. All claims asserted on behalf of Bob Bennie Wealth Management, Inc., fail to state a claim upon which relief may be granted, and Bob Bennie, lacks standing to assert the constitutional claims of Bob Bennie Wealth Management, Inc..

4. Plaintiffs' claims against Defendants Walter, Herstein and Griess relating to the orders issued by the Nebraska Department of Banking and Finance fail to state a claim because Walter, Herstein and Griess did not sign or issue the orders.

WHEREFORE, Defendants pray that the Plaintiff's claims identified above be dismissed.

Dated this 19th day of August, 2011.

JOHN MUNN, JACKIE E. HERSTEIN,
RODNEY R. GRIESS and JACKIE L.
WALTER, Defendants

By: /s/ Mark C. Laughlin
Mark C. Laughlin, #19712
Timothy J. Thalken, #22172
FRASER STRYKER PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 681022663
(402) 341-6000
(402) 341-8290 Fax
mclaughlin@fraserstryker.com
tthalken@fraserstryker.com
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Steven Grasz
David M. Newman
HUSCH BLACKWELL LLP
1620 Dodge Street, Suite 2100
Omaha, NE 68102
ATTORNEYS FOR PLAINTIFFS

/s/ Mark C. Laughlin